

DRAFT
JUN 27 1983

Honorable George Bush
President of the Senate
United States Senate
Washington, D.C. 20510

Honorable Thomas P. O'Neill, Jr.
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. President:

Dear Mr. Speaker:

Enclosed for consideration of the Congress is legislation to amend the Federal Employees' Compensation Act, the workers' compensation program for Federal employees, together with a summary and cost estimates.

This legislation has the strong support of the Administration. We urge that it be given prompt and favorable consideration.

The Office of Management and Budget advises that

Sincerely,

Raymond J. Donovan

Enclosures

DRAFT

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Summary of
Federal Employees' Compensation Improvements Act of 1983

This legislation is designed to address a number of interrelated problems in the administration of the Federal Employees' Compensation Act (FECA), the workers' compensation program for Federal employees. The program is administered by the Office of Workers' Compensation Programs (OWCP) of the Employment Standards Administration (ESA) in the Department of Labor (DOL). The problems addressed by the bill include:

- * inadequate incentives for injured employees to return to work in the period immediately following traumatic injury;
- * delays in initial claims determinations;
- * inequities in compensation;
- * deficiencies in rehabilitation and reemployment efforts for disabled employees;
- * inadequate controls on long-term disability cases; and
- * inadequate controls on medical and other program expenditures.

These concerns, and the solutions proposed by the bill, are summarized below. While many of these problems can and are being addressed in part under the existing law, legislation is necessary to ensure permanency to such administrative efforts and to permit further efforts to progress.

-2-

Section 2: Waiting Period and Continuation of Partial Pay

In recognition of the problems for employees created by the necessary time to process cases, 1974 amendments to the FECA provided for continuation of full pay (COP) for up to 45 days to allow time for initial processing in traumatic injury claims. In addition, the amendments postponed until the end of the COP period a three-day waiting period. These amendments were designed to assure claimants of income during the claims adjudication process with a minimum of administrative burden.

These changes have been accompanied, however, by certain counterproductive consequences. There has been a significant increase in the number of minor injuries for which benefit claims are filed. These claims require adjudication just as do other cases, and thus limit the program resources available to process more serious claims. Moreover, in more serious cases the lack of any pay loss immediately after injury discourages the employee's recognition of the need for prompt rehabilitation and return to work. The use of full pay during the subsequent 45 day period reinforces this problem, even though this period is crucial to recovery efforts. Moreover it is extremely difficult to determine at a later time whether the employee was or was not disabled during some portion of the COP period because sound, contemporaneous medical evidence is often lacking.

-3-

To avoid the adverse impact on the system of excessive claims filing, the legislation would restore the waiting period to the 3 days immediately after all traumatic injuries. Unlike the situation prior to 1974, however, employees' accrued leave would generally be available for this period. Thereafter, employees unable to return to duty status would receive 80% of their normal gross pay for up to 45 days. As a condition of receipt of such partial pay, employees will have to submit to medical examination: once during the first two weeks, and once toward the end of the 45 day period. This provision assures close medical monitoring to promote recovery efforts during the initial period after injury, and contributes significant information to the claims examination process. The employing agencies will designate the doctors to perform such examinations, and the process will be closely monitored by the program administrators of the Department of Labor. Regulations will establish the type of information such examinations are to produce, and to assure the use of specialists where necessary. Where the required information can be provided by the employee's own physician, the agency may at its option permit that doctor to conduct the required examinations. If the first examination produces negative results, partial pay may be suspended, but only if evidence of continued disability at that point in time has not been submitted by the employee's doctor. The evidence

-4-

collected in such examinations could only be used for purposes of this subchapter, and thus not for adverse actions.

Section 3: Initial Claims Processing and Internal Review

The claims processing mechanism has long been criticized as too slow, delaying adjudication of claims, and when approved, payments to claimants. Significant improvements in this area depend primarily on actions by employing agencies: to ensure the timely submission of required forms and evidence, and to advise claimants of their rights and responsibilities. In addition, elimination of multiple review opportunities for the same case is necessary to allow the Department of Labor to devote more effort to the outstanding case load.

To meet these concerns, the bill provides for increased use of employing agency compensation specialists to follow up on initial accident reports, to expedite associated paperwork, to provide employees and their supervisors with needed information and assistance, and undertake other claims processing chores. Specific authority is provided for agencies to pay medical bills in cases where there is no lost time and during the continuation of partial pay period. The bill also provides for the establishment by regulation of time frames for submission by agencies of the detailed information the Secretary needs

-5-

in case processing. The Secretary is authorized to take appropriate action when an agency persistently fails to meet these time frames, or persistently fails to provide evidence in the detail necessary.

Administrative determinations on claims are, as under present law, not reviewable in the courts. The bill would clarify the relationship, however, among the several layers of possible internal review of the "initial" decision of the OWCP district office on the claim. An employing agency may request the district office to reconsider the matter and issue a new decision if it timely requests in writing and supplies specific objections to the "initial" decision. A claimant may request such a reconsideration if the claimant can submit new evidence that would warrant such an action. A claimant may also request, with or without new evidence, that a hearing be held on the matter in a location near the claimant's residence; or a claimant may request that the Employees' Compensation Appeals Board established by the Secretary in Washington, D.C. review the case based upon the record and written submissions. A claimant may have a reconsideration before a hearing, and one or both before going to the ECAB, but may not seek review in the reverse order. Some cases are returned to a lower level because, for example, of inadequate development of the file or consideration

-6-

of certain issues -- a matter the program is seeking to minimize through further training of personnel -- in which case subsequent review may proceed in the same fashion. Decisions become final when internal review at the next appropriate level is not timely sought. Final decisions may be reopened only under the circumstances described in section 6 of the bill.

The bill provides for payment of 10% additional compensation on any disability compensation -- and only disability compensation -- withheld on account of totally or partially adverse decision which is subsequently determined to have been incorrect. Such compensation will be payable from the compensation fund but will not be charged to the account of employing agencies.

The bill also makes several changes in attorney's fees. Fees will in general continue to be based only upon the value of services actually performed, as determined by the Secretary. In cases where the intervention of an attorney results in an increase in compensation otherwise awarded, however, fees may be set as a percentage of the past due compensation payable (exclusive of the 10% penalty payable to the claimant for an improper decision), not to exceed 25 per cent of such past due compensation. Attorney fees will not be collectable prior to DOL approval, and will then be a lien on unpaid compensation

-7-

and will be paid directly to attorneys by DOL. If the entire fee cannot be paid in this fashion because most compensation has already been paid, claimants are responsible for the remainder. The bill specifically relieves claimants, however, of responsibility for any charges greater than the difference between the approved fee and the lien amount. In addition, criminal penalties for accepting an unapproved fee are strengthened by the bill.

Section 4: Inequitable Benefits

Current FECA benefits provide a disabled worker without dependents two-thirds of pre-disability gross wage, tax free; and up to three-fourths of pre-disability wages, tax free, for disabled workers with dependents. For higher wage employees, the benefits at the family (augmented) rate often exceed their pre-disability disposable income.

There are other problems with the current array of FECA benefits. Death benefits are less than disability benefits. Annual adjustments to compensation based on the CPI put recipients of FECA out of synchronization with what has happened to the pay of the position they held prior to their work-related injury or illness. Life insurance amounts, pegged to some multiple of salary of the position held at the time of disability, are

-8-

not adjusted over time to reflect the changes in the pay for that position. Maintenance allowances during rehabilitation and certain other allowances established by law have not been adjusted for some time.

Moreover, the present system of awards for permanent partial disabilities, such as loss of an arm or leg, results in significant inequities among workers. Those who can not return to work with such an injury receive no more than those who can. Those earning high wages get higher awards than those who suffer the same permanent harm while earning lower wages.

The bill proposes to eliminate the augmented, family benefit rate and pay only the rate provided in most workers' compensation programs: two-thirds of pre-disability gross wages, tax-free. This rate generally results in benefits no less than 78% of the pre-disability after-tax income of the employee. Higher wage employees would still, under this proposal, receive considerably more than 80% of their pre-disability after-tax income. Accordingly, the bill would lower the cap on disability benefits.

Under the bill, death benefits would generally be paid at the same rate as disability benefits. To be comparable with the offset between disability benefits payable under a workers'

-9-

compensation program and the Social Security Act, an offset would be established between FECA and Social Security death benefits. The offset would not apply, however, where essentially all Social Security credit is based on Federal civilian employment, as, for example, is the case at present with TVA wage and hour employees. Annual adjustments to compensation would be made at the same rate as adjustments in Federal civilian pay. Life insurance amounts would likewise be adjusted to keep up with such changes. The bill would provide for revised allowances for maintenance during rehabilitation efforts, attendants, and funeral expenses, and would authorize future adjustments in these allowances to be done by regulation.

The Secretary would be specifically barred from paying disability benefits to claimants imprisoned for a felony, except when participating in certain rehabilitation efforts, consistent with the restriction in the Social Security Act. The Secretary would also be barred from increasing partial disability benefits when job termination is a result of employee misconduct.

Benefits for loss or loss of use of bodily parts would be paid in addition to wage loss benefits in any case, and would be based on a formula that would not include reference to employees' individual wage levels. Scheduled awards will be reduced by

-10-

the amount of compensation actually paid for part of any such loss in the past; and, where measurement through pre-employment physical examination is possible and has been performed, by that percentage of the loss that preceded employment. At the present time, such determinations might only be possible for hearing loss.

The bill would also provide for reports to the Congress on studies that would consider other changes in FECA benefits. The studies would deal with benefit inequities which to resolve appear to involve significant administrative complexities or changes in practices outside the FECA itself (e.g. tax and retirement policies). Five years would be authorized for these studies. This would allow time to analyze changes in Federal retirement policies for new Federal employees that are presently under consideration as a result of changes in Social Security coverage.

Section 5: Rehabilitation and Reemployment

Early and concentrated rehabilitation efforts, and reemployment in light duty or other positions, can significantly speed recovery: both physically and psychologically. In addition, it saves compensation dollars. Yet apart from a few agencies, efforts in this area have not been sufficient. Among the problems

-11-

cited for such limited rehabilitation efforts are the lack of regular information on the capabilities of the disabled employee after initial adjudication of the case, and the administrative problems associated with position reassignment or modification.

The bill would provide that once compensation is awarded, the Department of Labor is to assign to a disabled employee a visiting nurse or similarly qualified rehabilitation specialist to act as liaison between employee, physicians, and the employing agency in assessing and promoting medical and economic recovery. Such activity is payable from the Employees' Compensation Fund. Employing agencies are to designate an official responsible for position modification who is to assist agency personnel in adjusting job requirements to permit return to employment by those with medical restrictions, and who is to provide the Secretary of Labor regular reports on cases referred to such designee by the Secretary. The Secretary would also monitor any rehabilitation and reemployment efforts of the agencies.

To provide the time, flexibility, and pressures to permit such efforts to succeed, the bill would take a number of actions. By certification to the agency and OMB that recovery is progressing in a satisfactory manner, DOL can authorize an exception,

-12-

for up to 12 months, to agency personnel ceilings (full-time equivalents) where necessary to aid in the reemployment of partially recovered workers, and to authorize funding some of the costs of positions used for this purpose through the chargeback system. By similar DOL certification to the employing agency, the existing one year reemployment right for fully recovered employees would be extended for up to two more years. Moreover, a limited restoration right would be added for those who are not fully recovered, to encourage prompt restoration to appropriate duty for as many FECA recipients as possible. In addition, the bill would permit relocation expenses to be paid to employees who accept a transfer to obtain a position consistent with remaining capabilities after injury or illness. Finally, the bill would authorize the Secretary to suspend the payment of partial disability benefits to employees returning to Federal employment with a partial disability where the agency compensates them in a lesser position at their full pre-disability pay rates. This obviates the extra administrative burden associated with payment of partial disability compensation in lieu of pay, at roughly the same cost given the differences in tax treatment of pay and compensation and certain mandatory deductions from pay not deducted from compensation.

-13-

An employee refusing to participate in these or other rehabilitation efforts for other than good cause will have wage-loss benefits terminated automatically under the bill for the period of the refusal. Under present law, such action simply results in a new determination of the employee's wage-earning capacity.

Section 6: Improved Control of Long-Term Disability Cases

A major expense of the FECA program involves those cases which result in long-term disability. There has been a tendency in the past, both by the Department and by the employing agencies who pay the bill for these claims to fail to aggressively monitor them. Medical examinations are oftentimes not performed, and reporting requirements are not strictly enforced. At the same time, however, there are instances where an aggressive monitoring program can result in employee harrassment, or is not needed at all given the medical situation of the employee. Accordingly, the bill seeks to strike a balance between these extremes.

The bill provides for the Department of Labor, absent a determination that it would serve no useful purpose, to conduct a medical examination at least annually of long-term disability recipients. DOL would also schedule such examinations at any time either the employee or employing agency submits evidence of a change in condition, or requests a determination of the

-14-

medical capacity of the employee to accept a particular position. Both the employee and the employing agency may designate an additional physician to participate in any such examination; and where there are differences between them on the results, the Secretary would have the discretion to appoint an impartial examiner to make an additional report. Medical documentation could be substituted for such examinations where appropriate.

The bill also provides for the extension of reporting requirements on income sources to total disability cases: the present law only requires such reports in partial disability cases. Compensation recipients would be required to certify as part of such reports that they are not receiving any of a number of benefits whose receipt simultaneous with FECA receipt is prohibited. Failure to timely file a report would result in suspension of benefit checks until the report is filed, and the suspended amount is not repayable later. As under the present law, filing a misleading or inaccurate report results in forfeiture of compensation paid for the entire reporting period, and appropriate collection action. Criminal penalties for misrepresentation or concealment in connection with these reports or other information used as the basis for FECA determinations would be strengthened.

-15-

This section also imposes some restrictions on the reopening of final decisions of the Secretary. In general, once a final decision is issued, the Secretary has complete discretion whether or not to reopen the claim. The bill would require the Secretary to reopen the claim if a request is filed by either a claimant or an employing agency based on new evidence showing a change in condition or a mistake in a finding of fact. The bill would prohibit the Secretary from reopening a claim, however, more than one year after claim rejection or the date of last compensation payment, to ensure the file can be permanently closed.

Section 7: Improved Expenditure Controls

All entitlement programs are subject to flaws in expenditure control systems, and FECA is no exception. While considerable administrative progress has been made in the last two years to tighten controls and secure repayment of compensation in appropriate cases, increased statutory authority is necessary to continue progress in this area.

Several matters concerning the relationship between FECA and other recoveries for the same injury or illness would be clarified. The exclusive remedy clause of the FECA would be clarified to ensure that suits against fellow employees are clearly precluded for the same liability. Partial pay during the first weeks

-16-

after injury, as well as actual "compensation" paid thereafter, would be clearly reimburseable to the Government out of awards recovered from third-party tortfeasors. In addition, DOL would be given authority to delegate to employing agencies significantly increased responsibility with respect to pursuing third-party claims, including the right to require claimants to assign any third-party rights to the Government. Such delegation would be subject to DOL regulations, and thus subject to such policy positions or legal interpretations as DOL, as administrator of the program, may take.

The bill would expressly mandate the establishment of rules for the exclusion from program participation of hospitals, doctors and other providers of medical or rehabilitation services and supplies who engage in program abuse or who have been found guilty of serious professional misconduct in connection with similar programs. Fee schedules or other cost control measures would also be established for physicians where such fees are chargeable to the Fund, and employees would be specifically exempted from any charges not paid by the Fund. The bill would authorize similar cost control measures to be established at some future time to other medical providers, as feasible.

-17-

Finally, a definition of "total disability" would be added to the FECA indicating that such awards are reserved for those who can engage in no gainful employment in their commuting area. It will thus clarify that recipients of such awards under the FECA are not available for work, as they must be to receive unemployment insurance benefits.

Section 8: Miscellaneous; Effective Dates

The bill makes some minor technical changes in the FECA and in the availability of health insurance to FECA survivors.

The bill is prospective only: the benefit levels of existing beneficiaries would not be affected, except for subsequent annual adjustment of their benefits. The change in the method of computing annual adjustments would go into effect at once, as would the administrative changes. The rest of the bill would go into effect six months after enactment.

TABLE I

FEDERAL EMPLOYEES' COMPENSATION PROGRAM

Cost Changes Resulting From FECA Legislative Proposals (Effective 4/1/84)
(Total Savings to the Federal Treasury)
(000)

DRAFT**JUN 27 1983**

	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	TOTAL
Current Projected Benefit Costs ►	\$1,074,702	\$1,117,294	\$1,157,703	\$1,197,186	\$1,239,088	\$5,785,973
PROPOSAL						
1. Amend Benefit Formula for Disability; (66 2/3% of Gross Pay with no Augmented Benefits)	-11,966	-21,947	-31,258	-39,948	-48,023	-153,142
2. Amend Benefit Formula for Death; same rate as disability compensation	+556	+1,170	+1,848	+2,592	+3,408	+9,574
3. Restructure COP; 45 days partial pay after 3-day waiting period. Net Savings	-19,679	-20,399	-21,359	-22,319	-23,579	-107,335
4. Equalize Schedule Awards.	+9,350	+10,050	+10,700	+11,500	+12,000	+53,600
5. Increase Statutory Maximum Allowances for Funeral, personal attendants, and maintenance allowances.	+100	+100	+100	+100	+100	+500
6. Agency Compensation Specialist Net Costs	+1,915	+2,010	+2,110	+2,216	+2,327	+10,578
7. Visiting Nurses - Net Savings (Benefit reductions less cost of nurses)	-552	-557	-603	-630	-659	-3,021
8. COLA Adjustments Based on Federal Civilian (GS) Pay Raises	+3,727	+11,039	+19,201	+27,062	+38,997	+100,026
9. Additional Compensation for Benefits Erroneously Withheld	+2,791	+2,917	+3,048	+3,185	+3,329	+15,270
TOTAL:	-13,758	-15,637	-16,213	-16,242	-12,100	-73,950

TABLE II

Revised Chargeback Obligations
 Projections Based on FECA
 Legislative Proposals 1/
 (000)

DRAFT**JUN 27 1983**

	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
1. FEC Obligations (Total Benefit Costs)	\$1,074,702	\$1,117,294	\$1,157,703	\$1,197,186	\$1,239,088
2. Less Agency Reimbursements (Chargeback)	883,351	931,161	970,499	1,008,262	1,043,560
3. Current Base					
Budget Authority	191,351	186,133	187,204	188,924	195,528
Outlays	191,351	186,133	187,204	188,924	195,528
4. Policy Change to FEC					
Revised FEC Obligations	1,078,708	1,120,046	1,160,739	1,198,695	1,248,240
Change in FEC Obligations	+4,006	+2,752	+3,036	+1,509	+9,152
Revised Agency Reimbursement	883,351	931,434	971,100	1,008,350	1,043,680
Change in Agency Reimbursement	0	+273	+601	+88	+120
5. New Base					
Budget Authority	195,357	188,612	189,639	190,345	204,560
Outlays	195,357	188,612	189,639	190,345	204,560
6. Change in Current Base					
Budget Authority	+4,006	+2,479	+2,435	+2,051	+9,032
Outlays	+4,006	+2,479	+2,435	+2,051	+9,032

1/ Assumes legislation effective date of 4/1/84, with cost impact beginning 10/1/84.

DRAFT
JUN 27 1983

A B I L L

To amend the Federal Employees' Compensation Act to provide a waiting period and restrictions on continuation of pay received during initial claims processing, increased timeliness in that processing, more equitable benefits, increased emphasis on reemployment of disabled workers, improved oversight of long-term disabilities, and improved expenditure controls.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) this Act may be cited as the "Federal Employees' Compensation Improvements Act of 1983".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 5 of the United States Code.

WAITING PERIOD AND CONTINUATION OF PARTIAL PAY

SEC. 2. (a) (1) Section 8117 is amended to read as follows:

"§8117. Waiting period

"An employee is not entitled to compensation for disability, other than as provided by sections 8103 and 8104 of this title, during the first 3 days thereof unless total disability exceeds 14 days. Pursuant to regulations of the Secretary, employees may use accrued annual leave, sick leave, or leave without pay during such waiting period. In developing regulations under this section, the Secretary shall consult with the Office

-2-

of Personnel Management and other appropriate officials to ensure consistency with other authority concerning leave."

(2) The table of sections for subchapter I of chapter 81 is amended by striking out the item relating to section 8117 and inserting in lieu thereof the following:

"8117. Waiting period."

(b) (1) Section 8118 is amended to read as follows:

"§8118. Continuation of partial pay

"(a) An employee, as defined in section 8101(1) of this title (other than those referred to in clauses (B) or (E), or those referred to in clause (F) who are not otherwise employees under that section), who --

(1) is disabled during any of the first forty-five days after completion of the waiting period set forth in section 8117 of this title;

(2) has taken such steps as the Secretary of Labor may require to file a claim for disability due to a traumatic injury compensable under this subchapter; and

(3) has taken such other actions as are required under this section;

is entitled to receive 80 per centum of the employee's gross pay, as defined in regulations of the Secretary, for each such day. Such payments shall be made by the employing agency of the employee without a break in time unless controverted under

-3-

regulations of the Secretary, pursuant to regular pay periods and procedures for the type of employee involved, and under such additional accounting procedures and other regulations as the Secretary of Labor may require. Such payments shall not be considered as compensation, as defined by section 8101(12) of this title, except as otherwise specifically provided by this subchapter. If a claim for disability during any period for which such a payment has been made is subsequently denied by the Secretary of Labor pursuant to subsection (a) of section 8124 of this title, such payment shall, at the option of the employee, be charged to sick or annual leave or be deemed an overpayment of pay subject to appropriate recovery action under Federal or State law.

"(b) To receive payment under this section, an employee must, unless waiver is granted in writing by the employing agency, undergo a physical examination during the first two weeks of partial pay, and, as prescribed by regulations of the Secretary, once again prior to the conclusion of the partial pay period if still disabled. Notwithstanding the provisions of section 8123(a) of this title, such examination shall be conducted by a physician or physicians designated by the agency, pursuant to regulations of the Secretary. The agency may at its option elect to use for such examination the physician otherwise selected by the employee. The time period for such examinations shall

-4-

be extended to the extent necessary to schedule an appointment with the designated physician. The regulations of the Secretary shall also establish standards for conducting such examinations, and submitting reports thereon, including standards on:

"(1) discussion of the results with the employee;

"(2) the detail of written reports; and

"(3) special qualifications of examining physicians for the type of physical or mental condition involved;

to ensure that such examinations and reports further the purposes of this subchapter. Payments under this section may be suspended by the agency as a result of such a medical examination only if, as provided in regulations of the Secretary, other medical evidence asserting the existence of disability as of the time of such agency examination has not been submitted. The results of medical examinations conducted under this section shall be used only for purposes of this subchapter."

(2) The table of sections for subchapter I of chapter 81 is amended by striking out the item relating to section 8118 and inserting in lieu thereof the following:

"8118. Continuation of partial pay."

-5-

INCREASED TIMELINESS IN INITIAL
CLAIMS PROCESSING AND INTERNAL REVIEW

SEC. 3. (a)(1) Section 8120 is amended to read as follows:

"§8120. Initial claims processing by employing agencies

"(a) Upon injury to an employee which results in death or probable disability, the responsible agency official shall promptly communicate these facts to compensation specialists designated by the employing agency to carry out responsibilities vested in the agency under this Act and related regulations. The designated compensation specialists shall conduct such further communications as may be necessary with both the employee or survivors and the employee's immediate superior to advise them on claims procedures, eligibility requirements, available benefits, and such other matters as may be set forth in regulations of the Secretary to promote prompt medical recovery, return to employment, and the expeditious development of materials necessary for accurate case processing.

"(b) Notwithstanding section 8145 of this title, the Secretary may permit employing agencies to pay medical benefits under section 8103 of this title in cases where the illness or injury does not result in time lost from work, and in cases where partial pay is continued under section 8118 of this title. The Secretary shall by regulation establish standards for the performance of such duties.

-6-

"(c) The Secretary shall by regulation provide specific time periods for the submission of information and reports from employing agencies to assist in the expeditious and accurate processing of claims by the Secretary, and of information to assist in the recovery of costs from any third parties responsible for the injury or illness.

"(d) The Secretary shall be responsible for monitoring the performance of agencies in carrying out their responsibilities under this section. The Secretary shall initiate such actions as may be necessary in the Secretary's judgment to alleviate any persistent pattern of delay, neglect, uncooperativeness or failure to carry out those responsibilities. Such actions may include suspension of opportunities otherwise provided employing agencies for participation in claims review under this Act. In taking any action under this subsection, the Secretary shall take into consideration any agency explanation of noncompliance and of forthcoming improvements.".

(2) The table of sections for subchapter I of chapter 81 is amended by striking out the item relating to section 8120 and inserting in lieu thereof the following:

"8120. Initial claims processing by employing agencies.".

-7-

(b) Section 8124 is amended to read as follows:

"§ 8124. Findings and award; hearings

"(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against payment of compensation, which shall constitute a decision under this subchapter, after--

"(1) considering the claim presented by the claimant, the report furnished by the immediate superior, and all available medical evidence; and

"(2) completing such investigation as the Secretary considers necessary.

The claimant and the employing agency shall promptly be provided a full copy of the decision of the Secretary, together with a statement of the facts accepted as the basis therefor and copies of any medical reports relied upon in reaching the decision (including instructions therefor and evaluations thereof).

Any such decision shall become final absent a timely request for reconsideration or hearing under this section, or review under section 8149 of this title.

"(b) (1) Except as provided in section 8120(d) of this title, when an employing agency dissatisfied with the decision of the Secretary under subsection (a) of this section so requests in writing within 45 days after any such decision is issued, the Secretary shall reconsider the decision if the agency submits

-8-

objections thereto with the specificity required by regulation of the Secretary. A copy of such request shall be transmitted to the claimant.

"(2) When a claimant for compensation dissatisfied with the decision issued by the Secretary pursuant to subsection (a) of this section so requests in writing within 45 days after any such decision is issued, the Secretary shall reconsider the decision if the claimant has new evidence to submit. A copy of such request shall be transmitted to the employing agency.

"(3) The claimant and the employing agency shall be entitled to submit additional evidence during any reconsideration proceeding, and shall be informed of any changes made in the decision as a result of the proceeding. Any such decision shall become final absent a timely request for a hearing under this section or review under section 8149 of this title.

"(c) (1) When a claimant for compensation dissatisfied with a decision of the Secretary under either subsection (a) or subsection (b) of this section so requests in writing within 60 days after any such decision is issued, the Secretary shall schedule a hearing on the matter. A copy of such request shall be transmitted to the employing agency. No hearing shall be held when reconsideration under subsection (b) is pending, nor when the hearing officer, upon a preliminary review of

-9-

the file, determines there are errors in the decision and remands the case for reconsideration in light thereof.

"(2) In conducting a hearing under this subsection, the representatives of the Secretary shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of this title, and shall conduct such hearings in a manner that will best ascertain the merits of the claim and establish a record that will dispose of all the relevant issues involved. The representatives shall receive such relevant evidence as the claimant adduces and such other evidence as may be necessary or useful in evaluating the claim or resolving the issues. The representative of the Secretary shall notify the claimant and employing agency, in writing, of the decision in the matter, the basis thereof, and any modifications of the award in connection therewith. Any such decision shall become final absent timely request for review under section 8149 of this title."

(c)(1) Section 8149 is amended by inserting immediately after the second sentence thereof the following: "Appeals must be filed in writing within such time as the Secretary may prescribe, and may not be taken during the pendency of any reconsideration or hearing on the matter."

(2) The heading for section 8149 is amended to read as follows: "§ 8149. Regulations; appeals".

-10-

(3) The table of sections for subchapter I of chapter 81 is amended by striking out the item relating to section 8149 and inserting in lieu thereof the following:

"8149. Regulations; appeals."

(d)(1) Section 8129 is amended--

(A) by inserting at the end thereof the following new subsection:

"(d) When compensation under section 8105 or 8106 of this title is denied, in whole or in part, decreased or discontinued by action of the Secretary, and such action is subsequently determined to have been incorrect, the claimant shall receive in addition to the compensation due for such period of time an additional ten percentum of such underpayment, which shall (except for purposes of subsection (b) of section 8147 of this title) also be considered compensation for the purposes of this subchapter."; and

(b) by amending the heading thereof to read as follows:

"§ 8129. Recovery of overpayments; awards for underpayments".

(2) The table of sections for subchapter I of chapter 81 is amended by striking the item relating to section 8129 and inserting in lieu thereof the following:

"8129. Recovery of overpayments; awards for underpayments."

(e)(1) Section 8127(b) is amended by adding at the end thereof the following new sentences: "Such fees may be based upon a reasonable percentage, not to exceed twenty-five per centum,

-11-

of any additional past due compensation secured through the actions of an attorney, exclusive of any amount payable to the claimant under section 8129(d) of this title. An approved attorney's fee shall be a lien upon unpaid compensation due under an award. A claimant shall not be responsible for the payment of any attorney's fee prior to a determination of the Secretary as to the amount approved nor, subsequent to that time, for any amount in excess of any difference between the amount approved and that secured by a lien under the preceding sentence."

(2) Section 292 of Title 18, United States Code, is amended by--

(A) striking "\$1,000" and inserting in lieu thereof "\$5,000"; and

(B) striking "one year" and inserting in lieu thereof "two years".

EQUITABLE BENEFITS

SEC. 4. (a) (1) Sections 8110 and 8138 are hereby repealed.

(2) Section 8104(b) is amended by striking "sections 8105 and 8110" and inserting in lieu thereof "section 8105".

(3) Section 8112 is amended to read as follows:

"§8112. Maximum and minimum monthly payments

"Compensation for disability or death under sections 8105, 8106 or 8133 shall not, except as adjusted under section 8146a of this title --

-12-

"(a) exceed 66 2/3 percent of the amount resulting from application of cumulative increases pursuant to section 8146a of this title to \$50,000; and

"(b) not be less than 66 2/3 percent of the minimum rate of basic pay for GS-2, or, if less, the pay of the employee as determined pursuant to section 8114 of this title.".

(b) (1) Section 8133 is amended to read as follows:

"§8133. Compensation in case of death

"(a) If death results from an injury sustained in the performance of duty, the United States shall pay compensation equal to that which would be paid were the employee totally disabled. Such payments shall be limited to beneficiaries of the employee eligible pursuant to subsection (b) of this section.

"(b) Beneficiaries entitled to receive benefits under this section are limited to any surviving spouse, child, parent, brother, sister, grandparent or grandchild of the deceased employee who, at the time of death, was dependent upon the employee for more than half of his or her support. A surviving spouse shall be presumed to be so dependent upon the deceased employee in all cases, and a child shall be presumed to be so dependent if under age 18 or if a student. Such compensation shall continue until death of the beneficiary or until--

"(1) in the case of a surviving spouse, remarriage before age 60;

-13-

"(2) in the case of a child, grandchild, brother or sister, marriage, becoming age 18 or, if a student or incapable of self-support at age 18, such time as student status ends or self-support becomes possible; or

"(3) a parent or grandparent marries or ceases to be dependent. A surviving spouse entitled to benefits under this title on the basis of more than one deceased employee shall elect one entitlement to be utilized.

"(c) The compensation payable under subsection (a) shall be apportioned equally to all beneficiaries eligible under subsection (b) except that--

"(1) the Secretary may adjust the portion to be paid to each beneficiary in accordance with his determination that equity and fairness so require, and shall in all cases honor an agreement among the beneficiaries eligible at any time;

"(2) absent a determination or agreement under paragraph (1), a surviving spouse, or surviving children where there is no surviving spouse, shall receive no less than half the total of any award, and surviving children shall in no event receive less than one-third the total of any award; and

"(3) upon the cessation of eligibility of any beneficiary, the total shall be reallocated in accordance with the provisions of this subsection."

-14-

(2) Section 8116(b) is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following new paragraph:

"(2) Benefits to which an individual is entitled under this subchapter on account of the death of an employee shall be reduced by any amounts received by such individual pursuant to section 202 of the Social Security Act on account of the same death, except no such reduction shall be made in the case of amounts received under that section based on employment all, or substantially all, of which is as a Federal civilian employee.".

(c) (1) Sections 8101(4), 8101(12), 8103(a), 8105(a), 8106(a), 8113(a), 8114(b) and 8135(a) are amended by striking "monthly" wherever it appears therein.

(2) Section 8114(c) is amended to read as follows:

"Pay is deemed to be one fifty-second of the average annual earnings determined under this section; except that for compensation paid for disability or death during the first 90 calendar days after the occurrence of the disability or death, pay may at the discretion of the Secretary be the same as that determined pursuant to the regulations under section 8118(a) of this title.".

(3) Section 8135 is amended--

(1) by striking "\$50" and inserting in lieu thereof "\$100";
(ii) by striking "exceed 60 months compensation" and inserting in lieu thereof "be based on life expectancy of more than 5 years"; and

-15-

(iii) by striking "twenty-four times the monthly compensation payment" and inserting in lieu thereof "two years worth of compensation".

(4) (A) Paragraph (6) of section 8101 is amended to read as follows:

"(6) 'surviving spouse' means the husband or wife living with, or dependent for support on, the decedent at the time of the decedent's death, or living apart for reasonable cause or because of the decedent's desertion;".

(B) Section 8101 is amended by striking paragraph (11).

(C) Sections 8109(a), 8135 and 8141 are amended by striking out "widow or widower" each place it appears and inserting in lieu thereof "surviving spouse".

(d) (1) Section 8116 is amended by adding at the end thereof the following new subsection:

"(d) (1) Notwithstanding any other provision of this title, no benefits for wage loss under this subchapter shall be paid to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by

-16-

the Secretary, is expected to result in such individual being able to engage in employment upon release and within a reasonable time.

"(2) Notwithstanding the provisions of section 552a of this title, or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary, upon written request, the name and social security account number of any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Secretary may require to carry out the provisions of this subsection.".

(2) Section 8115(b) is amended by adding at the end thereof the following: "A partially disabled employee who is properly removed from employment with the United States for misconduct shall not be entitled to an increase in compensation under section 8106 of this title by virtue of the loss of such employment without regard to the availability of suitable comparable work.".

(e) (1) Section 8146a(a) is amended to read as follows:

"(a) Compensation payable on account of disability or death shall be adjusted in the same fashion and on the same date

-17-

as the average rate of adjustment in general schedule pay rates under section 5305 of this title."

(2) Section 8704(c) is amended--

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(3) in the case of an employee whose insurance is continued under section 8706(b)(2) of this chapter, 'annual pay' for any period means the average annual earnings computed under section 8114 of this title increased by the cumulative percentages by which compensation is increased pursuant to section 8146a of this title."

(f)(1) Section 8111 is amended--

(A) in subsection (a), by striking "\$500 a month, as the Secretary considers necessary" and inserting in lieu thereof "\$5.00 an hour for the service of an attendant, as adjusted from time to time by regulations of the Secretary consistent with changing national wage patterns for such attendants,"; and

(B) in subsection (b), by striking "\$200 a month" and inserting in lieu thereof "\$90 a week, as adjusted from time to time by regulations of the Secretary consistent with changing national patterns of the cost of such care".

-18-

(2) Section 8134(a) is amended by striking out "\$800" and inserting in lieu thereof "\$1,500, as adjusted from time to time by regulations of the Secretary consistent with changing national patterns of the cost of such expenses".

(g)(1) Section 8107 is amended to read as follows:

"§8107. Compensation Schedule

"(a) If an injury results in the permanent loss, or permanent loss of use, of a member or function of the body, or involves disfigurement, the employee is entitled to compensation as provided by this section. The compensation is--

"(1) payable regardless of whether the cause of the loss or loss of use originates in a part of the body other than that member;

"(2) payable regardless of whether the loss or loss of use also involves another loss or loss of use of the body; and

"(3) in addition to compensation for total or partial disability under section 8105 or 8106.

"(b) The amount of compensation for any loss or loss of use compensable under this section shall be the product of--

"(1) $66 \frac{2}{3}$ percent of the minimum annual rate of basic pay for grade GS-8 established by section 5332 of this title on the date of the injury which results in the award of compensation, and

-19-

"(2) the value of the loss as prescribed under subsection (c) of this section.

Such amounts shall be computed in dollar amounts, and shall be paid in a lump-sum without regard for the provisions of section 8135 of this subchapter. Such amounts shall be reduced by the dollar amount of any awards paid by any employer of the employee for some portion of the loss.

"(c) The permanent losses or losses of use compensable under this section, and the values for 100 percent loss in each case, are--

"(1) arm lost, 6.0;

"(2) leg lost, 5.5;

"(3) hand lost, 4.7;

"(4) foot lost, 3.9;

"(5) eye lost, 3.1;

"(6) thumb lost, 1.4;

"(7) first finger lost, 0.9;

"(8) great toe lost, 0.7;

"(9) second finger lost, 0.6;

"(10) third finger lost, 0.5;

"(11) toe other than great toe lost, 0.3;

"(12) fourth finger lost, 0.3;

"(13) loss of hearing--

"(A) complete loss of hearing of one ear, 1.0; or

-20-

- "(B) complete loss of hearing of both ears, 3.9;
- "(14) compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is to be the same as for loss of the eye;
- "(15) compensation for loss of more than one phalanx of a digit is to be the same as for the loss of the entire digit, with loss of the first phalanx worth half the compensation for loss of the entire digit;
- "(16) in the case of an arm or leg, amputation above the wrist or ankle, respectively, shall be compensated as for loss of the whole arm or leg;
- "(17) compensation for loss of use of two or more digits, or of a hand or foot, is to be proportioned to the loss of use of the hand or foot occasioned thereby;
- "(18) compensation for permanent total loss of use of a member is to be the same as for loss of the member;
- "(19) compensation for permanent loss of use of a member may be for the proportionate degree of loss of use of the member, and the degree of loss of vision or hearing is to be determined without regard to correction;
- "(20) in case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is to be for loss of use of each member or part thereof, cumulatively; but when the injury affects only two

-21-

or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is to be computed on the loss as affecting both ears;

"(21) for serious disfigurement of the face, head, hands, or neck of a character likely to handicap the employee in securing or maintaining employment, proper and equitable compensation at a value not to exceed 3.1 shall be awarded in addition to any other compensation payable under this schedule; and

"(22) for permanent loss or permanent loss of use of any other important external or internal organ of the body, as determined by the Secretary, proper and equitable compensation at a value not to exceed 6.0 for each organ so determined shall be paid in addition to any other compensation payable under this schedule.".

(2) Section 8108 is amended to read as follows:

"§8108. Reduction of compensation for subsequent injury to same member

"(a) The compensation payable under section 8107 of this title is reduced by the compensation paid or payable under that section for an earlier injury if--

"(1) compensation in both cases is for loss or loss of use of the same member or function or different parts of the same member or function or for disfigurement; and

-22-

"(2) the Secretary of Labor finds that compensation payable for the later loss or loss of use in whole or in part would duplicate the compensation payable for the preexisting loss or loss of use.

"(b) Compensation payable under section 8107 shall be reduced to the extent of any pre-existing condition which the Secretary determines can and has been accurately measured and which accounts for part of a loss otherwise determined to be compensable under that section."

(3) Section 8109 is amended--

(1) in subsection (a)(3), by striking out "the end of the period" and inserting in lieu thereof "full payment of the amount";

(2) in clause (B) of subsection (a), by striking out "for the period" and inserting in lieu thereof "in the amount"; and

(3) by striking out subsections (b) and (d).

(4) Section 8102(b) is amended by striking out "for a period for" and inserting in lieu thereof "to the extent to".

(5) Section 8115(a) is amended by striking out ", except permanent partial disability compensable under sections 8107-8109" and inserting in lieu thereof "under section 8106".

(h) The Secretary of Labor shall conduct a review of the benefits available under the Federal Employees' Compensation Act, and shall report to the Congress any recommendations in connection therewith within five years of the date of enactment of this Act. In particular, the Secretary shall review --

-23-

- (1) consistent with changing tax requirements, methods for better approximating some percentage of an employee's disposable or spendable income as the basis for disability benefits under the Act;
- (2) consistent with changing retirement and other benefits for Federal employees, methods for integrating benefits under the Act with such retirement and other benefit systems; and
- (3) approaches to consistent and equitable compensation for those injured while in temporary or volunteer Federal service.

REHABILITATION AND REEMPLOYMENT

SEC. 5. (a) Section 8103(a) is amended--

- (1) in the first sentence thereof, by inserting ", including physical rehabilitation" immediately after "physician"; and
- (2) immediately prior to the last sentence thereof, by inserting the following: "The Secretary shall provide for regular communications with the employee, and in appropriate cases provide for a visiting nurse or other rehabilitation or reemployment specialist deemed qualified to ensure the coordination of employment opportunities with recovery from the compensable condition. Such activity shall be payable from the Fund established pursuant to section 8148 of this title. Such actions by the Secretary shall be in addition to and not preclude any such actions taken by an employing agency. The Secretary shall monitor all agency

-24-

rehabilitation efforts, and may require such reports from agencies as are necessary in this regard. The Secretary shall report to the Congress any rehabilitation programs which, after consultation with the operating agency, continue to have features the Secretary finds objectionable."

(b) Section 8104 is amended--

(1) by striking the heading and inserting in lieu thereof:

"§ 8104. Vocational rehabilitation; position modification";

(2) in the first sentence thereof, by striking "a permanently disabled" and inserting in lieu thereof "an"; and

(3) by adding at the end thereof the following:

"(c) The Secretary of Labor, in consultation with the Office of Personnel Management, shall by regulation provide for the designation by employing agencies of personnel to assist in adjusting job requirements so as to permit those receiving compensation under this subchapter who can resume employment with some medical restrictions to resume their prior duties to the extent possible or other employment for which they may be qualified. Such regulations shall provide for the coordination of such activities with the rights available to employees under sections 7203 and 8151 of this title, for appropriate use of agency medical personnel pursuant to section 7901 of this title, for regular reports on cases referred to such designee by the Secretary of Labor, and appropriate provisions to ensure

-25-

that other requirements of this title are administered consistent with the requirements of this section.

"(d) Upon request of an employing agency and certification of the Secretary of Labor that reemployment for the purposes of this section is likely to result in overall savings to the United States:

"(1) the number of full-time equivalents otherwise permitted such agency shall be waived for such reemployment for up to one year; and

"(2) the account of the employing agency in the Fund established under section 8147 of this title shall pay and be charged the cost of the pay and the United States' share of benefits to an employee for the first three months any such employee is reemployed pursuant to this section.".

(c) Subsection (b) of section 8113 is amended to read as follows:

"(b) If an employee without good cause refuses to undergo vocational rehabilitation (including an evaluation therefor) when so directed by the Secretary under section 8104 of this title, the employee shall not be eligible to receive any payments for wage loss that would otherwise be payable under section 8105 or 8106 of this title for the period of the refusal as determined by the Secretary.".

-26-

(d) (1) Section 8151 is amended --

(A) in subsection (b), by striking ", and (2)" and inserting in lieu thereof:

"; provided, however, that such right shall be extended by up to two additional years pursuant to certification by the Secretary of Labor that the employee is making progress toward full recovery in a satisfactory manner, and

"(2) the department or agency which was the last employer shall immediately and unconditionally accord an employee, who may resume employment under medical restrictions before the end of one year after either the date of commencement of compensation or the time compensable disability recurs if the recurrence begins after the injured employee resumes regular employment with the United States, the right to resume his former or an equivalent position if the job requirements can be modified consistent with the medical restrictions of the employee, or if not, the right to reassignment to a vacant position consistent with such medical restrictions, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures, and

"(3)"; and

(B) by adding at the end thereof the following new subsections:

-27-

"(c) A transfer made to promote the purposes of rehabilitation and reemployment under this subchapter shall be considered to be in the interests of the Government for the purposes of section 5724(h) of this title, and may be paid under such section without regard to separation from service.

"(d) Pursuant to regulations of the Office of Personnel Management, an agency may pay to an employee who has returned to duty status and is entitled, under the provisions of section 8106 of this title, to compensation for partial disability, the basic pay payable to the employee immediately before the injury or illness which resulted in compensation under section 8106, subject to appropriate adjustments thereto as if such pay were that otherwise payable to such employee.".

(2) Section 8106 is amended by adding at the end thereof:

"Payments under this section shall be suspended during any period of time that an employee entitled to such compensation is receiving full pay pursuant to section 8151(d) of this title or other authority, in accordance with regulations of the Secretary.".

IMPROVED OVERSIGHT OF LONG-TERM DISABILITIES

SEC. 6.(a) Section 8123 is amended--

(1) in subsection (a)--

(A) by striking "An" in the first sentence and inserting in lieu thereof "Upon request of the Secretary of Labor, an";

-28-

(B) by inserting immediately after the first sentence: "Absent a determination by the Secretary that it would serve no useful purpose, and written notice thereof to the employing agency, such examinations shall take place no less frequently than once a year for employees or former employees receiving compensation for disability under this subchapter. Such examinations shall also be performed at any time either the employee or employing agency submits evidence indicating a change in condition or requests a determination as to whether an employee who has suffered a disability compensable under this subchapter is medically capable of performing the duties of a particular position.";

(C) by inserting immediately before the last sentence: "If the employing agency so requests, it may, at its own expense, designate an additional physician to participate in such examination. Each participating physician may file a separate report.";

(D) by striking "United States" in the last sentence and inserting in lieu thereof "Secretary of Labor, any physician designated by an employing agency,"; and

(E) by striking "shall" the first time it appears in the last sentence and inserting in lieu thereof "may";

(2) in subsection (c), by inserting "subsection (a) of" immediately before "this section" in the first sentence thereof;

(3) in subsection (d), by inserting in the first sentence thereof

-29-

"ordered under subsection (a) of this section, as determined by the Secretary of Labor" immediately after "examination" and before the comma therein; and

(4) by adding at the end thereof new subsections as follows:

"(e) An employee or former employee who has been awarded and is still receiving compensation for disability under this subchapter shall provide such reasonable and necessary medical documentation as the Secretary requests which may, as determined in any case by the Secretary, be utilized in place of any annual examination otherwise required by this section.

"(f) The Secretary of Labor shall, by regulation, provide for the dissemination to employing agencies of medical evidence obtained under this section or other provisions of this subchapter.

"(g) Submission to medical examinations required under this subchapter does not preclude the right of an employee to reimbursement under this subchapter for examinations and other medical expenses authorized by section 8103 of this title.".

(b) Subchapter I of chapter 81 is amended by:

(1) striking subsection (b) of section 8106 as amended by this Act, and redesignating the subsequent subsection accordingly;

(2) adding a new section immediately after section 8106 to read as follows:

-30-

"§8106a. Disability Reporting Requirements

The Secretary of Labor may require a totally or partially disabled employee to report any earnings from employment, self-employment, or other sources, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who fails to make an affidavit or report within 60 days after a request therefor shall have all rights to compensation for wage loss under section 8105 or 8106 of this subchapter suspended until such time as the requested affidavit or report is received by the Secretary. Compensation suspended as a result of the preceeding sentence shall not be payable at any time. An employee who knowingly omits or understates any part of his earnings, or knowingly omits receipt of sources of income which are prohibited to be received by recipients of compensation under this chapter, forfeits his right to compensation under section 8105 or 8106 of this title with respect to any period for which the affidavit or report was required. Compensation forfeited under this section, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under Federal or State law, unless waived in accordance therewith."; and

-31-

(3) by adding to the table of sections immediately after the item relating to section 8106 the following:

"8106a. Disability reporting requirements."

(c) Section 1920 of title 18, United States Code, is amended--

(1) by striking "section 8106" and inserting in lieu thereof "section 8106a";

(2) by striking out "is guilty of perjury and" and inserting in lieu thereof the following: "or whoever wilfully conceals earnings from employment or self-employment or other material fact on the basis of which compensation was awarded in order to obtain such compensation,"; and

(3) by striking out "one year" and inserting in lieu thereof "two years".

(d) (1) Section 8128 is amended to read as follows:

"§8128. Modification of final decisions

"(a) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is --

"(1) final and conclusive for all purposes and with respect to all questions of law and fact; and

"(2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

Credit shall be allowed in the account of a certifying or delivering official for payment in accordance with any such action.

-32-

"(b) The Secretary may review a final decision under this subchapter for or against the payment of compensation or part thereof at any time on the Secretary's own motion, and shall do so upon written request of a claimant or an employing agency where there is new evidence showing a change in condition or of a mistake in a finding of fact, except as otherwise provided in this section. No such review may be conducted of any case subsequent to one year after the date of the last payment of compensation for wage-loss or rejection of a claim.

"(c) In accordance with the facts found upon a review pursuant to subsection (a) of this section, the Secretary may --

"(1) terminate, continue, increase or decrease compensation previously awarded as of the date of such determination;

"(2) award compensation previously denied; or

"(3) reinstate compensation previously discontinued.

Review of decisions by the Secretary under this subsection shall be available in the same manner as initial determinations under section 8124(a) of this subchapter.

(2) The table of sections for subchapter I of chapter 81 is amended by striking out the item relating to section 8128 and inserting in lieu thereof the following:

"8128. Modification of final decisions.".

-33-

IMPROVED EXPENDITURE CONTROLS

SEC. 7.(a) Section 8116(c) is amended by striking "and instead of all other liability of the United States or the instrumentality" and inserting in lieu thereof the following: "of any other civil action or proceeding by reason of the same subject matter against the United States or an instrumentality thereof or against a federal employee or his estate whose act or omission, within the scope of his employment, gave rise to the claim, and instead of all other liability of such entities and persons".

(b) Section 8131 is amended --

(1) in subsection (a)--

(A) by inserting immediately after "Secretary of Labor" the following: ", or the employing agency pursuant to regulations of the Secretary,"; and

(B) by inserting the following new sentence immediately after the first sentence: "For purposes of this section and section 8132 of this title, compensation includes partial pay furnished pursuant to section 8118 of this title, except that pursuant to regulations of the Secretary, the amount of such pay recovered shall be credited to the account in the employing agency from which such pay was made.";

(2) in subsection (b), by inserting "or employing agency" immediately after "Secretary"; and

(3) in subsection (c)--

-34-

(A) by inserting immediately after the second sentence a new sentence as follows: "The Secretary may delegate to an employing agency his responsibility to prosecute or compromise a cause of action assigned to the United States in actions involving that agency, in which case the agency shall provide any recovery to the Secretary for purposes of the preceeding sentence.";

and

(B) by striking the last sentence thereof.

(c) (1) Subchapter 1 of chapter 81 of title 5, United States Code, is amended by inserting at the end of such subchapter the following new section:

"§ 8160. Exclusion of health care providers

"(a) The Secretary shall maintain a list of providers of medical, surgical or hospital services, appliances or supplies in each compensation district who are excluded, by virtue of the provisions of this section, from receiving payment for such services, under this chapter, and shall disseminate such information to employees or their representatives and employing agencies through such means as the Secretary believes will reasonably ensure its availability.

"(b) (1) Notwithstanding any other provisions of this subchapter, the Secretary shall not provide payment under this chapter for any medical, surgical or hospital service, appliance, or supply furnished by an individual or entity where the Secretary determines under this section that such provider--

"(A) knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact in a request for payment under this chapter, whether for use in determining the right to payment under this chapter or for other purpose;

"(B) submitted, or caused to be submitted, three or more bills or requests with a twelve-month period for payment under this chapter containing charges which the Secretary finds to be substantially in excess of such provider's customary charges, unless the Secretary finds there is good cause for the bills or requests containing such charges;

"(C) knowingly and willfully failed to timely reimburse claimants for treatment, services or supplies furnished under this chapter paid by the Government;

"(D) knowingly and willfully charged, attempted to charge, or failed to timely reimburse claimants for any amount in payment for treatment, services or supplies furnished under this chapter in excess of the amount paid by the Government;

"(E) has persistently failed, neglected or refused to submit full and accurate reports of medical treatment furnished in connection with a claim under this chapter or to respond to the Secretary's request for information about condition or treatment;

-36-

"(F) knowingly and willfully furnished treatment, services or supplies which are determined by the Secretary to be substantially in excess of the need of the recipient thereof, to be of a quality which substantially fails to meet professionally recognized standards, or both; or

"(G) has been convicted under any criminal statute (without regard to pending appeal thereof) for fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances, or supplies, or has otherwise been excluded or suspended from participation in such program for misconduct.

Payment may nevertheless be made for such services, appliances or supplies if rendered in an emergency, or if failure to reimburse would create hardship for an employee (or survivors) who received such services, appliances or supplies without knowledge that they would not be reimbursable by virtue of this section. Providers of services, appliances, or supplies, and Federal and State programs that make payments for similar services, appliances and supplies shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is properly effectuated.

"(c)(1) The Secretary shall have the authority to make rules and regulations and to establish procedures, not inconsistent

-37-

with the provisions of this subchapter, which are necessary or appropriate to carry out the provisions of this section, including the nature and extent of the proof and evidence necessary for actions under this section and the methods of taking and furnishing such proof and evidence.

"(2) Any decision to take action with respect to a provider under this section shall be based on specific findings of fact by the Secretary. The Secretary shall provide notice of these findings and an opportunity for a hearing pursuant to section 556 for a provider who would be affected by a decision under this section. A request for a hearing must be filed within 30 days after notice of the findings is received by the provider making such request. If a hearing is held, the Secretary shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the findings of fact and proposed action under this section.

"(3) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (5 U.S.C. 49,50) shall apply to the jurisdiction, powers, and duties of the Secretary or any officer designated by him.

-38-

"(4) Any provider, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision, within 60 days after the mailing to him of notice of such decision, by filing a petition in the court of appeals of the United States for the judicial circuit in which the plaintiff resides or has his principal place of business, or the Court of Appeals for the District of Columbia. As part of his answer, the Secretary shall file a certified copy of the record, including all evidence submitted in connection therewith. The findings of fact of the Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.

"(d) A determination made by the Secretary under subsection (c) shall be effective upon notice consistent with the requirements of subsection (c)(2), and until the Secretary finds and gives notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur."

(2) Section 8101(2) is amended by striking out "State law." and inserting in lieu thereof the following: "State law, except that it does not include any medical practitioner excluded on the basis and for the duration of a determination by the Secretary under section 8160 of this subchapter."

(3) The table of sections for subchapter I of chapter 81 is amended by inserting at the end thereof the following:

"8160. Exclusion of health care providers.".

(d) Section 8103 is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding the other provisions of this section, the medical, surgical or hospital services, appliances, and supplies paid for under this subchapter shall be limited to charges that are reasonable. The Secretary shall by regulation develop or adopt a schedule of reasonable amounts that will be paid for particular physicians services and, if feasible, for other medical, surgical or hospital services, appliances, or supplies provided. Such schedules shall be revised at appropriate intervals. Charges in excess of a scheduled amount shall not be paid by the Secretary except pursuant to procedures to be established by the Secretary for determining whether the excess charges are reasonable in any particular case, nor shall such excess charges be payable under chapter 89 of this title. In no event shall an employee or former employee be responsible for any payment to a medical provider for services, appliances or supplies furnished under this subchapter.".

(e) (1) Section 8105 is amended by adding at the end thereof the following new subsection:

-40-

"(c) For the purpose of this section, total disability means the inability to engage in any gainful activity within a reasonable commuting distance of the employee's place of residence because of a medically determinable physical or mental impairment that resulted, either by direct cause or by material aggravation, from factors of employment.".

(2) Section 8104(b) is amended by inserting "section 8105(c) and" immediately after "Notwithstanding", and by inserting "or during the normal course of medical recovery," immediately before "receive compensation".

MISCELLANEOUS; EFFECTIVE DATES

SEC. 8.(a)(1) Section 8139 is hereby repealed.

(2) Paragraph (1) of section 8101 is amended--

(A) by striking out subparagraph (D); and

(B) by inserting "or" at the end of of clause (ii), by striking out "; or" at the end of clause (iii) and inserting in lieu thereof a period, and by striking out clause (iv).

(3) Section 8131(d) is amended by striking out "Panama Canal Company" each place it appears and inserting in lieu thereof "Panama Canal Commission".

(4) Section 8104(a) is amended by striking out "Secretary of Health, Education and Welfare" and inserting in lieu thereof "Secretary of Health and Human Services".

-41-

(5) Section 8135(a) is amended by striking out "Secretary of Health, Education and Welfare" and inserting in lieu thereof "Secretary of Health and Human Services".

(6) Section 8141(b)(5) is amended by striking out "Secretary of Health, Education and Welfare" each place it appears and inserting in lieu thereof "Secretary of Health and Human Services".

(7) Section 8901(3)(D)(ii) is amended by striking out "who is separated after having completed 5 or more years of service and".

(b)(1) The amendments made by sections 4(d), 4(e), 4(f), 5(f), 6(c), and subsection (a) of this section, shall take effect on the date of enactment of this Act as follows:

(A) For the amendments made by section 4(e), with respect to any adjustments after that date, except that the first such adjustment made pursuant to those amendments shall only be such per centum of the adjustment otherwise provided for by such amendments as represents that portion of the year between the last increase prior to such amendments and October 1, 1985.

(B) For the amendments made by section 4(d), 4(f), 5(f), 6(c), and subsection (a) of this section, with respect to any actions taken after that date.

(2) The amendments made by sections 2, 3, 5 (other than subsection (f)), 6 (other than subsection (c)), and 7 shall take effect 180 days after the date of enactment of this Act as follows:

-42-

(A) For the amendments made by sections 3, 5, 6 and 7, with respect to any actions taken after that date.

(B) For the amendments made by section 2, with respect to disabilities occurring on or after such date.

(3) The amendments made by sections 4 (other than subsections (d), (e) and (f)) shall take effect on the first day of the first full biweekly pay period established for employees of the Department of Labor in accordance with section 5504 of this title which commences after one hundred and eighty days have expired from the date of enactment of this Act, with respect to compensation or benefits payable after that date, with and only with respect to an individual who-

(A) had not filed a claim for compensation prior to the date of enactment of this Act; and

(B) was neither being paid compensation on the basis of such claim prior to the date of enactment of this Act, nor is or has been subsequently determined to have been eligible for payment of compensation at that time on the basis of such claim.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

JUN 27 1983

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Dave:

Enclosed for Administration clearance is proposed legislation to amend the Federal Employees' Compensation Act (FECA), the workers' compensation program for Federal employees. This matter is part of our legislative program for this year.

This legislation was developed by the Department of Labor in close consultation with an Interagency Task Force of major Federal employing agencies. I am informed that the proposal has the substantial concurrence of Task Force members.

The Department of Labor believes that the Administration should work intensively for enactment of FECA legislation by the end of this year. To facilitate this objective, it is essential that any Administration proposal be submitted to the Congress in the near future. Accordingly, we urge that every effort be made to complete consideration of our proposal as soon as possible.

Sincerely,


Raymond J. Donovan

Enclosures